

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

DECISION AND ORDER
00-CV-478S

TEE TO GREEN GOLF PARKS, INC.,
SUSAN BLUMHAGEN, and STEVEN BLUMHAGEN,

Defendants.

1. Defendant Susan M. Blumhagen sent this Court a letter dated December 10, 2007, requesting that counsel be appointed to represent her and Defendant Steven Blumhagen. David Rothenberg, the Blumhagens' retained counsel, has been conditionally relieved as counsel in this case, subject to the Blumhagens retaining new counsel. (See Docket No. 130.) Initially, the parties are reminded that this Court does not accept motions by letter. But this time only, this Court will construe Defendant Susan Blumhagen's letter as a Motion for Appointment of Counsel. For the following reasons, the motion is denied.

2. Civil litigants, unlike criminal defendants, do not have a constitutional right to the appointment of counsel. But pursuant to 28 U.S.C. § 1915(e)(1), this Court can request that a volunteer attorney review and accept a case where the litigant is unable to afford counsel. 28 U.S.C. § 1915(e)(1) (providing that a court "may request an attorney to represent any person unable to afford counsel"). Although the Blumhagens have not been granted *in forma pauperis* status, Susan Blumhagen asserts in her letter that they "have no assets and no money to hire new counsel." For purposes of this motion only, this Court accepts this unsworn representation.

3. At this stage, however, this Court cannot determine whether the Blumhagens'

defense in this case is likely to be of substance or successful, especially considering Defendant Steven Blumhagen's conviction in the parallel criminal action. See Hodge v. Police Officers, 802 F.2d 58, 60-62 (2d Cir. 1986). Accordingly, this Court declines to request that a volunteer attorney accept this case at this time. Defendant Susan Blumhagen's Motion for Appointment of Counsel is therefore denied without prejudice. This Court will extend the Blumhagens' deadline to retain new and separate counsel from January 8, 2008, to February 8, 2008. If they are unable to retain counsel, they must be prepared to proceed on their own.

IT HEREBY IS ORDERED, that the Clerk of the Court file Defendant Susan M. Blumhagen's December 10, 2007 letter as a Motion to Appoint Counsel.

FURTHER, that Defendant Susan M. Blumhagen's Motion to Appoint Counsel is DENIED without prejudice.

FURTHER, that the Blumhagen Defendants' deadline for retaining new and separate counsel is extended from January 8, 2008, to February 8, 2008.

FURTHER, that Attorney Rothenberg's deadline to file the status report described in this Court's November 8, 2007 Order (Docket No. 130) is extended from January 8, 2008, to February 8, 2008.

SO ORDERED.

Dated: December 27, 2007
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
United States District Judge